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THE TRYAL OF PHILIP Earl of Pembroke and Montgomery, Before the PEERS IN Westminster-Hall,

On *Thursday* the 4th. of *April* 1678.

Printed in the Year 1679.

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On Thurſday *April* 4. 1678.

ABout Nine of the Clock the Priſoner with his Guard came from the Tower, with the Ax before him, and went into the Room appointed for him. Between the hours of Eleven and Twelve at Noon, the Lords, Judges, and Aſſiſtants of the Houſe, came in order, two and two, from the Houſe of Lords, to the Court erected in *Weſtminſter*-Hall, with four Maces before them, and before the Lord High-Steward four more, beſides his own Serjeant and Purſe-bearer, with Garter King at Arms, and the Deputy Black-rod bearing the White Staff. After Obeiſance made to the Throne, each Lord, and the others, took their places, the Serjeants, with their Maces erect, kneeling, four on each ſide of the Throne.

Then the Clerk of the Crown in Chancery on the right hand, and the Clerk of the Crown in the Kings-Bench on the left hand, making three Reverences to the Lord High-Steward, came up to his Seat, and there both kneeling, the Clerk of the Crown in Chancery delivered the Commiſſion for the Office of High-Steward (*pro hac vice*) to his Grace, who delivered it to the Clerk of the Crown in the Kings-Bench to read, and then they both in the ſame manner went back to their Seats at the Table.

Then the Clerk of the Crown in the Kings-Bench ſaid as followeth.

Clerk of the Crown. Serjeant at Arms make Proclamation.

Serjeant at Arms. O yes, O yes, O yes: My Lord High-Steward of *England* ſtraitly chargeth and commandeth all manner of perſons here aſſembled, to keep ſilence, and give ear to his Majeſties Commiſſion, unto my Lord High-Steward his Grace directed, upon pain of Impriſonment.

Then all the Peers and Aſſiſtants ſtanding up, and uncovered, he read the Commiſſion *in hæc verba*.

Clerk of the Crown. Carolus, &c.

Serjeant. God ſave the King.

Then Garter and the Uſher that held the Staff, making three Reverences to his Grace, Garter on his knees preſented him the white Staff, which his Grace delivered to the Uſher, who likewiſe kneeled to hold the ſame, during the reſt of the Ceremony.

Clerk

Clerk of the Crown. Serjeant at Arms make Proclamation.

Serjeant. My Lord High-Steward of *England* his Grace ſtraitly chargeth and commandeth all manner of perſons here preſent, to be uncovered, upon pain and peril ſhall fall thereon.

Then the Clerk read the *Certiorari* to the Commiſſioners, before whom the Indictment was found, to return the ſame into the Houſe of Lords, with the Return *in hæc verba.*

Clerk of the Crown. *Carolus*, &c. *Virtute*, &c. Serjeant at Arms make Proclamation.

Serjeant. O yes: Conſtable of the Tower of *London* return thy Precept and Writ to thee directed, and bring forth thy Priſoner *Philip* Earl of *Pembroke* and *Montgomery*, on pain and peril ſhall fall thereon.

The Conſtable of the Tower of *London* being a Peer, by Sir *John Robinſon* his Lieutenant returned his Precept, and with the Ax born on his left hand, the edge from him, the Earl of *Pembroke* was brought to the Bar, the Lord High-Steward of *England* having then ordered the Judges to be covered, ſpake to the Priſoner as followeth.

Lord High-Steward. My Lord of *Pembroke*, Your Lordſhip is now brought before this Great Aſſembly in order to your Tryal, wherein you have to maintain all that can concern you in this World, your Eſtate, your Honour, and your Life it ſelf. There is no leſs a Crime charged on you, than the Murther of one of the King's Subjects, and this is not charged on you by common Voice and Fame, nor by the growing Rumour of the multitude, but by the grand Inqueſt of this County, which was made up of Gentlemen of good Quality and Conſideration. Though all this amount to no more than a bare Accuſation, (for God forbid that they who neither did nor could hear the Evidence on both ſides, ſhould any way prejudge your Tryal by their partial Examination) yet it hath produced the preſentment of ſuch a Crime, as is attended with extraordinary and unuſual Circumſtances.

And now for this Fact your Lordſhip is to be tryed in full Parliament, and your Arraignment is to be made as full and as ſolemnly as is poſſible. The King (who will have a ſtrict account of the Bloud of the meaneſt of his Subjects, by whomſoever it is ſhed) hath for this purpoſe appointed an High-Steward: And now your Lordſhip is to be tryed not by a ſelect number of Lords, but by the whole Houſe of Peers, who are met together to make Inquiſition for this Bloud.

Doubtleſs the ſhame of being made a Spectacle to ſuch an Aſſembly as this, and the having a man's faults and weakneſſes expoſed to the notice and obſervation of ſuch a Preſence as this is, to a generous Mind muſt needs be a penance worſe than death it ſelf; for he that outlives his own Honour, can have very little joy in whatſoever elſe he lives to poſſeſs.

In ſuch a ſtate and condition as this is, it will be very fit for your Lordſhip to recollect your ſelf with all the care and caution you can; it will be neceſſary for you to make uſe of the beſt temper, and the beſt thoughts you have, when you come to make your defence; let not the diſgrace of ſtanding as a Felon at the Bar, too much deject you; no man's credit can fall ſo low, but that if he bear his ſhame as he ſhould do, and profit by it as he ought to do, it is in his own power to redeem his reputation. Therefore let no man deſpair, that deſires and endeavours to recover himſelf again, much leſs let the terrors of Juſtice affright you; for though your Lordſhip have great cauſe to fear,

yet

yet whatever may be lawfully hoped for, your Lordſhip may expect from the Peers.

It is indeed juſt cauſe of dreadful apprehenſions, when you conſider how ſtrict and impartial the Judicature is which you ſtand before, and how impoſſible it is that any Conſideration of your Lordſhips Relation or Family, ſhall have any kind of Ingredience into their Lordſhips Judgement; nay you have cauſe to fear all this will make againſt you, when you conſider how the Quality of the Offendor doth aggravate the Crime.

You have reaſon to fear and be diſmayed again, when you conſider how ſevere, and how inexorable the Rule of Law is, in the Caſe of Bloud; and how certain it is that the Lords will make that Rule of Law the meaſure of your Life or Death: But yet, my Lord, there are other Conſiderations that may ſupport you.

Your Lordſhip may be ſure that they will receive no proof againſt you, but direct and poſitive Evidence; it will not be left to any proof, but ſuch proof, as by the manifeſt plainneſs of it, deſerves to be called Evidence. In the next place, your Lordſhip ſhall ſuffer no prejudice for want of Councel, for where there are any advantages that the Law can give you, this Court takes it ſelf obliged in Honour to put you in mind of it; nor can your Lordſhip ſuffer an Inconvenience, by having Councel to plead againſt you, for no Arguments nor skill can pervert their Lordſhips Juſtice; you ſhall not fall by the charms of Eloquence; nothing ſhall load or preſs you but your own Crime, and even that burthen may be alleviated, if there be any room for an Abatement, ſo far as it doth not contradict what they owe to the King, to themſelves, to the Law, and to the Juſtice of the Kingdom.

Hearken therefore (my Lord) to your Indictment with patience and attention, give no Interruption to the Councel or Witneſſes that ſpeak againſt you, and reſerve what you have to ſay for your ſelf till the time come, when your Witneſſes ſhall be examined, and you make your Defence, of which I will give you notice. And this you may rely upon, that when you do come to ſpeak for your ſelf, you ſhall be heard with as much favour and candor as the matter will bear; and when my Lords have heard all that can be ſaid on both ſides, doubtleſs their Lordſhips will give ſuch a Judgement in the Caſe, as is fit for you to receive, ſuch a Judgement as becomes this great Court, and ſuch a Judgement as is ſuitable to that known Equity, which their Lordſhips do always obſerve in all their proceedings.

Lord High-Steward. Read the Indictment to my Lord.

Clerk of the Crown. *Philip* Earl of *Pembroke* and *Montgomery*, hold up your hand, which he obeyed, by holding up his right hand.

You ſtand indicted by the name of Philip, *Earl of* Pembroke *and* Montgomery, *late of the Pariſh of St.* Martins in the Fields, *in the County of* Middleſex, *for that you not having the fear of God before your eyes, but being moved and ſeduced by the inſtigation of the Devil, the 4th. of* February, *in the 30th. year of the Reign of our Soveraign Lord* Charles *the Second, by the Grace of God, of* England, Scotland, France *and* Ireland, *King, Defender of the Faith,* &c. *with force and Arms, at the Pariſh aforeſaid, in the County aforeſaid, in and upon one* Nathaniel Cony, *Gent. in the peace of God, and of our ſaid Soveraign Lord the King, then and there being, feloniouſly, voluntarily, and of your malice forethought, did make an aſſault; and that you the ſaid* Philip, *Earl of* Pembroke *and* Montgomery, *with the right fiſt of you the ſaid* Philip, &c. *the ſaid* Natha-

niel Cony, *in and upon the left part of the Head of the ſaid* Nathaniel Cony, *then and there feloniouſly, wilfully, and of your malice aforethought, did ſtrike and bruiſe, and him the ſaid* Nathaniel Cony, *with your right fiſt aforeſaid, did beat and throw down to the ground; and that you the ſaid* Philip, *&c. the ſaid* Nathaniel Cony *ſo lying upon the ground, in and upon the Head, Neck, Breſt, Belly, Sides and Back, of him the ſaid* Nathaniel Cony, *then and there feloniouſly, wilfully, and of your malice before-thought, did ſtrike and kick, by reaſon of which ſaid kicking and bruiſing of the ſaid* Nathaniel Cony *on the ſaid left part of the Head of the ſaid* Nathaniel Cony, *with the ſaid fiſt of you the ſaid* Philip, *&c. and of the beating and throwing him to the ground aforeſaid; and alſo by reaſon of kicking of the ſaid* Nathaniel Cony *with the ſaid feet of you the ſaid* Philip, *&c. on the Head, Neck, Breſt, Belly, Sides and Back of the ſaid* Nathaniel, *he the ſaid* Nathaniel Cony, *from the aforeſaid 4th. day of* February *in the aforeſaid year, to the 10th. of the ſame month of* February, *in the Pariſh aforeſaid, in the County aforeſaid, did languiſh, and languiſhing did live; on which ſaid 10th. day of* February *in the year aforeſaid, he the ſaid* Nathaniel Cony, *of the ſtriking and bruiſing, beating and kicking, died; and ſo you the ſaid* Philip, *&c. the ſaid* Nathaniel Cony, *at the Pariſh aforeſaid, in the County aforeſaid, in manner and form aforeſaid, feloniouſly, voluntarily, and of your malice fore-thought, did kill and murther, againſt the peace of our ſaid Soveraign Lord the King his Crown and Dignity. How ſay you,* Philip *Earl of* Pembroke *and* Montgomery, *Are you guilty of this Felony and Murther whereof you ſtand indicted, or not guilty?*

E. of Pemb. Not guilty.

Cl. of Cr. Culprit How will you be tryed?

E. of Pemb. By my Peers.

Cl. of Cr. God ſend you a good deliverance. Serjeant at Atms make Proclamation.

Serj. O yes, If any one will give Evidence for our Soveraign Lord the King, againſt *Philip* Earl of *Pembroke* and *Montgomery*, the Priſoner at the Bar, let them come forth and they ſhall be heard, for the Priſoner ſtands at the Bar upon his deliverance.

Then Sir *William Dolben* Knight, the King's Serjeant at Law, Recorder of the City of *London*, opened the Indictment thus:

Sir *William Dolben.* May it pleaſe your Grace my Lord High-Steward of *England*, and the reſt of my Noble Lords.

Philip Earl of *Pembroke* and *Montgomery* ſtands indicted, for that he, the 4th. day of *February* laſt, in the Pariſh of St. *Martins in the Fields*, in the County of *Middleſex*, of his malice fore-thought, did make an aſſault upon one *Nathaniel Cony*, in God and the King's peace there being; and that he the ſaid *Philp* Earl, *&c.* with his right Fiſt, on the left part of the Head of the ſaid *Nathaniel*, then and there feloniouſly did ſtrike and bruiſe, and with his right Fiſt aforeſaid, him did caſt and throw down to the ground, and being ſo on the ground with his Feet did kick and ſtrike, of which ſaid ſtriking, bruiſing and kicking, the ſaid *Nathaniel Cony*, from the ſaid 4th. of *February*, to the 10th. of *February* following, did languiſh, and then died; and ſo the Jurors do upon their Oaths ſay, That the ſaid *Philip* Earl of *Pembroke*, &c. the ſaid *Nathaniel Cony*, at the Pariſh and County aforeſaid, feloniouſly, wilfully, and of his malice fore-thought, did murther, againſt the King's peace, his Crown and Dignity. To this Indictment the Earl of *Pembroke* hath pleaded not guilty, and put himſelf upon his Peers for his Tryal: We who are of

Counſel

Councel for the King, shall produce our Evidence to confirm this Accusation, with what it is, and of what nature, his Majesties Attorney-General will acquaint your Grace, and the rest of you my Noble Lords.

Then Sir *William Jones* (who being called by Writ, as Assistant to the House, was within the Bar) opened the Evidence to this effect.

Att. Gen. May it please your Grace my Lord High Steward of *England*, and the rest of my Noble Lords; *Philip* Earl of *Pembroke* and *Montgomery* stands here Indicted for the Murther of *Nathaniel Cony*: That my Lord of *Pembroke* was the cause of his death, I humbly conceive will need very little question before your Lordships, for we have such proof that it was his hand threw him down, and his feet that trod upon him and kicked him, which was the cause of his death, that it cannot be denied: but whether or no this killing amount to Murther, may be a matter of further controversie; and I hold it my duty to acquaint your Grace and my Lords, what the proof is, and then what we have to offer to prove it to be an offence even of this nature.

My Lords, I know to maintain an Indictment of Murther, there must be a proof of Malice; but the Law is plain (your Lordships know it, and my Lords the Judges will tell it you) that there are two sorts of Malice, the one is Malice express'd, and that is when a man can be proved to have born before hand an ill will and hatred to the person he killed; this sort of Malice we pretend not to be in this case: But there is another sort of Malice, which also in Law gives the denomination of Murder to the killing of a man, which is Malice implied, when any one shall without any provocation given by the party slain, bring another by violence to his Death: For our Law supposeth, and that upon good ground, that no man without a Provocation would kill his Brother, unless he had Malice to him before-hand; and that is the Malice that falls out to be the Ingredient of this case, for the poor unfortunate Gentleman that was killed, did not for ought that did appear to me, (and I have had all the proof given at the Coroners Inquest under my Examination) give the least Provocation to this Noble Lord. Some have thought that a person might be guilty of malicious Murther, though the party killed had given the Murtherer a blow; but I shall not contend for so strict a construction of a Provocation, for there was not in this case a blow struck, no nor an angry word given: all that I can find came from Mr. *Cony* was, to complain that a Friend of his that came into the Company with him, was turned out of doors; and sure such a thing will never be taken to be a Provocation, at leastwise such a one as will take away Malice implied. I shall now (my Lord) give your Lordships an account of the nature of our Evidence, as to the Fact, and that (my Lords) in short; for as I shall not use any aggravation above what the Cause requires, so I shall not tire your Grace, and my Lords, with any long Speech, but barely open the Evidence, and tell you in short what will come in proof before you.

It was on *Sunday* the 3d. of *February*, that my Lord of *Pembroke* and his Company were drinking at the House of one *Long* in the *Hay Market*, (I am sorry to hear the day was no better imployed by them) and it was the misfortune of this poor Gentleman, together with one Mr. *Goring*, to come into this House to drink a Bottle of Wine; my Lord of *Pembroke* saw them coming in, and knowing Mr. *Cony*, was very importunate with him to joyn Company: he at first refused, because of his Friend, and told his Lordship they had business together; but no denial he would take, and so at last they did go into

into my Lord's Room. After ſome diſtance of time, when it was near twelve of the Clock at Night, there fell out a difference between my Lord, and Mr. *Goring*, (the Gentleman that came in with Mr. *Cony*) who (it ſeems) gave my Lord of *Pembroke* ſome words, which provoked him to expreſs his diſtaſte of them, by throwing a Glaſs of Wine in his face; which injury Mr. *Goring* ſo far reſented, as that he was about to draw his Sword, but was prevented by ſome of the Company, and put out of the Room to avoid further miſchief. This Gentleman Mr. *Cony* that was killed, was not at all concerned in the matter of the difference, but only deſired to go out of the Room, that he might look after his Friend who was thruſt out of doors. He knew not why, (without any Provocation, as you will hear by and by) my Lord of *Pembroke* falls upon him, ſtrikes him with one blow to the ground, and when he was there trod upon him on his Back, on his Belly, on his Side, and kicked him ſo that the poor Gentleman fell into a Swound, and was after ſome time, with ſome difficulty brought to himſelf again: after they had perceived there was Life in him, they lifted him up, and laid him down on ſome Chairs that were in the Room, and thinking too much had been done by them already, they take their leaves of him, and commit him to the care of the Drawer. He was not (as it ſhould ſeem) ſo carefully attended by the Drawer, whoſe ignorance could not look after him as his condition required, and ſo fell down off the Chairs again divers times. After ſome time, early in the morning he was carried away in a Sedan to his own Lodging, and being there put to Bed, as he did grow a little more and more recovered out of his ſtupefaction, ſo he grew more and more in pain, and ſent for Doctors and Chirurgeons to conſult with, by whom he had all the means uſed that was poſſible to have ſaved his Life; but it proved there was ſo much Bloud forced out of his Veins, and gathered into one place of his Body, by thoſe Blows and Bruiſes, that he could not be recovered, and ſo after a Weeks time paſſed in intolerable pain, died: But yet all the time of his dying, and even conſtantly to his death, he did complain that it was my Lord's Bruiſes brought him into that condition. It will alſo be proved, that after his death, upon view of the Body by the Coroner and his Jury, there was the appearances of thoſe Blows and Abuſes, by broad Bruiſes in ſeveral parts of the Body, and this ſome of the Jury will teſtifie. This in ſhort is the matter of the Evidence, which we ſhall briefly prove, and then ſubmit it all to your Lordſhips Judgment.

L. H. St. Call the Witneſſes together, and ſpeak out Mr. Attorney.

At. Gen. Thoſe we ſhall call firſt are Mr. *Henry Goring*, Mr. *Richard Savage*, Mr. *John Shelly*, and Capt. *Fitz-Patrick*.

Cl. of Cr. The Evidence which you and every one of you ſhall give for our Soveraign Lord the King, againſt *Philip* Earl of *Pembroke* and *Montgomery*, the Priſoner at the Bar, ſhall be the truth, the whole truth, and nothing but the truth: So help you God.

L. H. St. Mr. Attorney, whom do you begin with?

At. Gen. Mr. *Henry Goring*.

L. H. St. Stand forward, *Goring*.

At. Gen. Pray Sir acquaint my Lords of the manner of your coming with Mr. *Cony* to Mr. *Longs*, and what happened there.

L. H. St. Sir, you muſt ſpeak ſo loud that I may hear.

Goring. May it pleaſe your Grace, Mr. *Cony* and I did upon *Sunday* the

3d. of *February* last, dine in the City, we ſtayed very late there, and I muſt ingeniouſly confeſs, we had drank more than was fit for us to have done; after that (if it pleaſe your Grace) I offered to ſet down Mr. *Cony* at his Lodgings, but he was ſo very ceremonious, that he would ſee me at home; it ſeems *Long*'s Houſe, the Tavern in the *Hay-market*, was in the way, and Mr. *Cony* would needs have us drink another bottle of Wine ere we parted: It was late, and the door ſhut, but we knocking pretty hard for admittance, did get it opened, and as ſoon as the door was opened, Mr. *Cony* went towards the Bar, and made ſome noiſe, being in drink; my Lord of *Pembroke* was then in a low room in the Houſe, and knowing Mr. *Cony*, (as I thought) came and asked him, if he would come in and drink with him; he replied, My Lord, I am with a Friend, and we have ſome buſineſs together: At length my Lord asked me very civilly to come in, and we did after ſome time come in; and when we were in, my Lord drank to me, as I remember, and we ſtood round the Table a while, and at laſt ſate down in ſome Chairs, for we were not ſo much our ſelves as to be able to ſtand all the while; then there was, it ſeems, ſome Diſpute between my Lord of *Pembroke* and me, wherein my Lord did conceive I had done him ſome injury, and threw a glaſs of Wine in my face.

Att. Gen. What kind of Diſcourſe was that, pray Sir?

Goring. Truly (may it pleaſe your Grace) I cannot remember all the Diſcourſe, becauſe I was ſo much in drink at that time; they ſay, it was about Families and Play, I cannot poſitively ſay what it was; but after my Lord of *Pembroke* roſe up to draw his Sword, and I laid my hand on mine.

Att. Gen. Well Sir; and what followed then?

Goring. Captain *Savage* ſtept in between my Lord and me, and the Drawer came buſtling about, and took me and ſhoved me out of the room; while I was thruſting out, I heard a noiſe behind me, and I ſee my Lord make ſomewhat towards Mr. *Cony*; but more I cannot ſay what was done, becauſe Mr. *Savage* was between my Lord and me. When I was out of the room, I found my Sword gone, and my Hat and Perriwig; I then made a noiſe at the door, and would not go away till I had recovered my things; the Man of the Houſe (who was in bed, it ſeems, for he was then undreſt, and in his night-Gown) came and asked me, what was the matter? I told him, I had been in that room with my Lord of *Pembroke*, where I had received ſome ill uſage, and had loſt my Hat and Perriwig, and they had broken a piece of my Sword, and taken it from me, which I deſired to have again; and (ſaid I) Mr. *Cony*, I doubt, is in danger, for there is quarrelling within, and I deſired to come in to ſee what they did with him.

Att. Gen. Well Sir; when you came in, what then?

Goring. Upon this, the Maſter of the Houſe did deſire me to go into a room, and a Gentlewoman (his Siſter, as I after underſtood) did alſo preſs me to go into another room, and promiſed they would bring Mr. *Cony* to me; upon which I went into a room there by, but it was ſomething long before I heard from them; and being under ſome impatience, they at laſt came and told me, Now, Sir, you may go in, if you pleaſe: when I came in, I found a Gentleman lying along upon the Chairs, and no body elſe in the room; I began to be ſuſpicious (for I was then, as I thought, ſomewhat ſoberer) that he had ſome Wound, and took the Candle and walked about him, and would fain have awakened him, but could not by all my endeavours; the Drawer told

me, he was only dead-drunk, and would in a little time come to himself; upon which I desired them to lay some Blankets upon him, and some Pillows under him, and set some more Chairs, to make the place broader, that he might not fall down; and I ordered the Drawer to be sure to watch with him till he awaked, and make a good fire, which he promised to do.

The next day Mr. *Cony* sent to my Lodging to come and see him, but I did not that day, because I did go out early, and did not return till late; but the very next day after, (being *Tuesday*) when I came to him, *Harry*, (said he) I was very much abused the other night in my Lord's company; I am sorry for that (said I) with all my heart; and I asked him, how he came to be abused? My Lord of *Pembroke* (said he) threw me down, and there some body trod upon me and kicked me, and he shall know that he has abused me, and that I expect satisfaction for it, I hope you will let him know so much, and carry him a Challenge from me: Mr. *Cony*, (said I) who did tread upon you? I know not, (said he) for I was in a swound, either my Lord of *Pembroke*, or some of his Creatures for him. I never had the honour to know my Lord of *Pembroke* before, nor above one or two of the Gentlemen that were with him then in the company.

Att. Gen. Sir, had you any discourse with him afterwards?

Goring. Yes, every day till *Thursday* at night.

Att. Gen. Did he complain of much pain?

Goring. Yes, constantly in his Belly, his Sides and his Shoulders.

Att. Gen. What did he tell you was the cause of his death?

Goring. He said, it was my Lord of *Pembroke* that had done him the injury in throwing him down; who trod on him, or kicked him, he could not tell, but said, my Lord should answer for it to him.

Att. Gen. Do you remember what part he complained of most?

Goring. His Belly.

Att. Gen. And what else?

Goring. I think his Side and Shoulders.

Att. Gen. What distance of time was it between your being thrust out of the Room, and your coming in, and finding him upon the Chairs?

Goring. About half an hour.

L. H. St. Mr. *Goring*, you say you saw no stroke given by my Lord of *Pembroke* to Mr. *Cony*.

Goring. No truly, may it please your Grace, I saw my Lord make towards him, but Mr. *Savage* was between my Lord and me, and I was put out of the Room.

L. H. St. You did not hear Mr. *Cony* charge my Lord with kicking him, or stamping on him?

Goring. He did not in my hearing charge him with stamping on him, but that he threw him down, and that then some one did kick him.

Att. Gen. My Lords, We have done with this Witness.

L. H. St. My Lord of *Pembroke*, Will your Lordship please to ask that Witness that spoke last any Questions, for now is your time?

E. of P. No, my Lord.

Att. Gen. Then we desire Mr. *Savage* may be examined; Mr. *Savage*, pray do acquaint his Grace and my Lords, what you know of this Business.

Savage. May it please your Grace, I was in company with my Lord of *Pembroke* at Mr. *Long*'s House in the *Hay-market*, when Mr. *Cony* came in, and making

making a great noise at the Bar, my Lord of *Pembroke* being in a lower Room, looked out at the door, and seeing who it was, my Lord saluted him very kindly, and told him he was glad to see him, and desired him to walk into his Room. Mr. *Cony* told him he had a Friend at door, and desired his Lordship to admit him, which my Lord embraced very kindly; and then Mr. *Cony* goes to the door and calls Mr. *Goring*, desiring him to come in, and they came together into the Room; my Lord desired them to sit down and drink a Glass of Wine, which they did, and after some time falling into discourse, Mr. *Goring* began to make use of some impertinent language to my Lord, and amongst the rest told him he was as good, or a better Gentleman then he was.

Att. Gen. *Goring* did?

Savage. Yes, *Goring* did; upon which my Lord threw a Glass of Wine in his face, and immediately stept back and drew his Sword: Mr. *Goring* was going to draw, but I came up to him, and took his Sword from him, and broke a piece of it, and upon my perswasion my Lord put up his Sword again; but for fear there might be more words, I took Mr. *Goring* in my arms, and shoved him out of the Room: and whilst I was thrusting him out of doors, I heard a noise of a Bustle behind me, and leaving the Drawer to keep Mr. *Goring* out, I saw my Lord of *Pembroke* strike *Cony* with his right hand, who immediately fell down, and then gave him a kick; and so upon that, finding him not stir, I took Mr. *Cony* being on the ground, (I and my Lord together, for I was not strong enough to do it my self) and laid him on the Chairs, and covered him up warm, and so left him.

Att. Gen. You say my Lord struck him a blow.

Savage. Yes, he did strike him.

Att. Gen. On what part?

Savage. I suppose on the face.

Att. Gen. You say, Sir, my Lord of *Pembroke* did kick him when he was upon the ground.

Savage. Yes.

Att. Gen. Did he kick him once, or oftner?

Savage. But once, that I saw.

Att. Gen. Pray Sir, on what part was it?

Savage. Some where on the Body, but I cannot tell what part.

Att. Gen. With what force did his Leg move?

Savage. Not with a very great force.

Att. Gen. How high was his Leg lifted up?

Savage. He pushed his Leg with a quick motion forwards.

Att. Gen. When you took him up he was senseless, you say; pray Sir, how long was it ere he was brought to life again?

Savage. Two or three minutes.

Att. Gen. What means did you use to bring him to himself?

Savage. We chased him over the Temples, and such things.

Att. Gen. When he came to life again, did he speak?

Savage. He did open his Eyes, but did not speak.

Att. Gen. What followed then?

Savage. We laid him upon some Chairs gently, for his Pulse was almost gone, that we could feel.

Att. Gen. Did his Eyes continue open after he was revived?

Savage.

Savage. Not long; for I asked him if he knew me, he seemed to shake his head, as if he did, and then closed his Eyes again.

Att. Gen. Before that accident, what condition was he in? was he able to talk?

Savage. He was very drunk, but he did say something.

Att. Gen. What discourse had he before he was struck down?

Savage. I cannot well remember, but I think he proposed Play to my Lord.

Att. Gen. Why did my Lord strike *Cony*?

Savage. I cannot tell, I was then putting *Goring* out of the Room, and hearing the noise of my Lord's motion towards *Cony*, I looked back and saw my Lord strike him.

Att. Gen. What language did he use to my Lord to provoke him to it?

Savage. I cannot tell any at all.

Att. Gen. Did you see Mr. *Cony* after that time, and what did he then say to you?

Savage. I went two days afterwards to see Mr. *Cony*, who told me he was then in a pretty good condition: He asked me whether my Lord had struck him? I told him, yes: Truly said he I did not know that my Lord had struck me, but finding my self so much in pain, I thought I had fain, partly through my drink, and partly through my Fits I used to have.

Att. Gen. We (my Lord) have now done with this Witness.

L. H. St. My Lord of *Pembroke*, will you ask Mr. *Savage* any Questions?

E. of P. No, my Lord.

L. H. St. Mr. *Savage*, I think you say you saw my Lord of *Pembroke* kick him once in your Judgment, was that kick of such force as to give any great bruise?

Savage. I did (my Lord) see him kick him once, but not with any great force, as I conceive.

L. H. St. You did not hear Mr. *Cony* complain my Lord had kick'd him?

Savage. No; for as I told your Lordship, when I was to see him two days after, he asked me the question, and said he did not know it before.

L. H. St. Mr. Attorney, pray on with your Witnesses.

Att. Gen. We shall next call Mr. *John Shelly*: Mr. *Shelly*, pray tell his Grace and my Lords your knowledge in this untoward accident.

Shelly. May it please your Grace, I was in the Room at *Longs*, when Mr. *Cony* and Mr. *Goring* came in; they were both very far in drink, in so much that *Goring* could hardly stand, but desired he might have leave to sit down, which he had: Mr. *Goring* in a little time proposeth Play to my Lord, and my Lord told him he would throw with him for 500*l.* and was sending away for the Money; but then Mr. *Goring* would not Play: I believe (said my Lord to him) you are an idle Fellow, that you will propose these things and not pursue them: Upon that Mr. *Goring* tells my Lord, his name was a better name then his Lordships, and he a better Gentleman then my Lord: Then my Lord takes some Wine, and threw in his face; hereupon Mr. *Goring* steps back, and drew his Sword, and my Lord did the same: Captain *Savage* steps in between them, and keeps my Lord, while *Goring* was put out of the Room: my Lord then desired Mr. *Cony* to go out with his Friend: Said he, I do not know upon what account my Friend is sent out; whereupon my Lord hit *Cony* a box on the Ear, and that threw him down.

Att.

Att. Gen. Pray Sir before my Lord ſtruck him, did not *Cony* give my Lord ſome ill language?

Shelly. He only ſaid as I told you before, I know not upon what account my Friend is turned out of doors.

Att. Gen. Did you ſee my Lord ſtrike him?

Shelly. Yes.

Att. Gen. Whereabouts?

Shelly. On the head, with his Fiſt, or his Hand.

Att. Gen. Did he fall at the firſt blow.

Shelly. Yes.

Att. Gen. Did he afterwards ſay any thing?

Shelly. No.

Att. Gen. Did you ſee my Lord kick him?

Shelly, No.

Att. Gen. Did you ſee my Lord hold up his foot to do it?

Shelly. Yes.

Att. Gen. How high?

Shelly. A pretty height.

Att. Gen. Pray what became of the Gentleman afterwards?

Shelly. They took him up in their arms, and laid him upon ſome Chairs.

Att. Gen. Did you ſee him laid there?

Shelly. Yes.

Att. Gen. Was he ſenſleſs when he was taken up?

Shelly. Yes.

Att. Gen. What was the reaſon do you think that he did not open his Eyes, and keep them open?

Shelly. Truly I believe his Drink, as well as the Blows.

Att. Gen. The one as well as the other.

Shelly. Yes.

Att. Gen. What then did they do with him?

Shelly. They laid Blankets upon him, and Pillows under him, and laid him upon the Chairs?

Att. Gen. How many Chairs?

Shelly. As many as reacht his length.

Att. Gen. Who did you leave him in charge withall?

Shelly. With the Drawer.

Att. Gen. Did he ſpeak between the time of his firſt fall, and your going away?

Shelly. No.

Att. Gen. Did you ſee him after?

Shelly. Yes, three days after.

Att. Gen. What did he then ſay to you?

Shelly. That he had a Fit, but was pretty well recovered.

Att. Gen. When was it you ſaw him after that?

Shelly. On the *Saturday* after, and then he told me the ſame again.

L. H. St. Did he impute any thing to my Lord of *Pembroke?*

Shelly. He ſaid nothing at all to me of the ground of his illneſs, but that which I have told your Grace.

L. H. St. My Lord of *Pembroke*, will your Lordſhip ask this Witneſs any Queſtions? *E. of P.* No, my Lord.

Att. Gen. Then We for the King deſire to examine Mr. *Fitz-Patrick*. Captain *Fitz-Patrick*, Pray tell my Lord High-Steward, and my Lords the Peers, what you know.

Fitz-Pat. My Lord, I was in the Room at *Long's* with my Lord of *Pembroke*, and my Lord was walking about the Room, and he hears a noiſe without, and ſteps to the door, where opening the door half, he ſaw Mr. *Cony* at the Bar, who was juſt come in, and ſeeing my Lord, comes to ſalute him, my Lord returning into the Room, ſaid to him, Will you come in and joyn Company? Mr. *Cony* anſwered, I have my Friend here my Lord, and brings Mr. *Goring* to my Lord, who ſaluted him kindly, and deſired them both to walk in: Upon which, all we that were in the Room ſtood up, and the Drawer gave them Chairs; after the drinking about of a glaſs or two, Mr. *Goring* (both being drunk) ſaid, amongſt other diſcourſe, I will drink, I will play, I will fight with any man. Who is this Gentleman, ſaid my Lord of *Pembroke*, that I ſhould never hear of, or know him? How, ſaid *Goring*, ('S Blood) not hear of me? My Name is *Goring*, a Name and Family as good as any Gentleman's in *England*: There is no body doubts it, ſaid my Lord: Your Betters, ſaid *Goring*; and then my Lord threw the Wine in his Face; and *Goring* going to draw, was put out of the Room by Mr. *Savage*, and my Lord, upon ſome words from *Cony*, ſtruck him down with his Hand.

Att. Gen. What words were thoſe?

Fitz-Pat. When I asked my Lord the reaſon why he ſtruck *Cony*, he told me, it was becauſe *Cony* had told him *Goring* ſhould not go out of the Room till he knew the reaſon of it.

Att. Gen. Did you hear him ſay ſo?

Fitz-Pat. No, not I, but my Lord upon my asking gave that for the reaſon.

L. H. St. What was the reaſon?

Fitz-Pat. Becauſe Mr. *Cony* told him, *Goring* ſhould not go out of the Room, till he knew ſome reaſon for it: After my Lord had ſtruck him, I was on the other ſide of the Table, and could not ſee whether my Lord did ſtamp on him, or kick him; but I ſee my Lord's Knee ſtir, and if he did kick him, he kickt him but once, for we ran in and took him up to lay him upon the Chairs, and taking his Handkerchief out of his Pocket to wipe his face, we pluckt out of his Pocket with it ſome falſe Dice, which we afterwards put into the hands of Mr. *Long*, to prove that they intended and propoſed Play; and after we had laid him on the Chairs, and wrapt him up warm, we left him.

Att. Gen. How was he after he was taken up?

Fitz-Pat. He open'd his Eyes, but being very drunk before, could not keep them open, but ſhut them again; and we made a Bed for him on the Chairs, and having wrapt him up warm, we left him, and ordered the Drawer to make him a fire.

L. H. St. Did you hear him ſpeak after he was up?

Fitz-Pat. No, my Lord: Mr. *Savage* ſpoke to him, and asked him, if he knew him; he only lookt on him, and by a turn of his Head ſeemed to anſwer him yes.

L. H. St. On the Oath you have taken, did you hear him ſpeak to my Lord of *Pembroke* at any time before he was ſtruck?

Pat. Yes, my Lord, he had ſpoken before, and I ſaw his Lips make a motion

tion towards my Lord, but what he ſaid, I know no otherwiſe than as I ſaid before.

L. H. St. My Lord of *Pembroke*, Will your Lordſhip ask this Witneſs any Queſtions?

E. of P. No, my Lord.

Att. Gen. We have now, my Lord, done with the Witneſſes that were by when the Fact was committed; by all whom your Lordſhips hear, the Blows were all given by my Lord of *Pembroke*, and in their company; they are all Gentlemen of Quality, and therefore, I believe, ſpeak the truth: We will now call ſome Witneſſes that were with the unfortunate Gentleman in his ſickneſs, whereof one was his Phyſician, another his Nurſe, and others, who were often with him, and after his death had a view of the Body. Theſe will give your Grace and my Lord an Account, that he died of thoſe Wounds and Bruiſes he then received; they are theſe four, Dr. *David Bruce*, Mr. *Thomas Hemes*, Mr. *Charles Jackſon*, *Alice Avery*.

Cl. of Cr. Hearken to me you four. The Evidence that you and every of you ſhall give for our Soveraign Lord the King, againſt *Philip* Earl of *Pembroke*, ſhall be the truth, the whole truth, and nothing but the truth: So help you God.

L. H. St. Whom do you call firſt Mr. Attorney?

Att. Gen. Dr. *Bruce*; my Lord: Pray Sir acquaint my Lord High-Steward his Grace, and my Lords the Peers, what you know of Mr. *Cony*'s Sickneſs, and the cauſe of his Death, as you apprehend.

Dr. *Bruce*. May it pleaſe your Grace, All that I can evidence in particular of Mr. *Cony*'s Sickneſs was this: On Monday morning after his being in company of the Earl of *Pembroke*, I was ſent for to come to Mr. *Cony*'s Lodgings, and about Ten of the Clock I came; he was then in extremity of pain in both Shoulders, ſo that he could not move, and his pains were ſo acute, that he could not admit of touching: Upon the abating of thoſe pains by my application the next day, he then began to complain of pains in his Belly, but thoſe not ſo extream as thoſe in his Shoulders; after ſome applications thereto, he complain'd of both, but in a little time was ſo eaſed, that he kept well all night, and till nine or ten the next morning. The next day, which was *Wedneſday*, when I came to ſee him, I told him of the common report of his being kickt; he ſeemed diſpleaſed that ſuch a thing ſhould be reported, and throwing down the Bed-cloaths, ſhewed me his Belly, but I could not ſee any blemiſh upon it then, either by diſcolouring or bruiſing; I found him indeed very backward in receiving Remedies, but left him then in a hopeful way of recovery, but ſaw him not after, becauſe being ſick my ſelf, I could not attend him.

Att. Gen. Did he complain of any Hurt about him then?

Bruce. Only in his Belly.

Att. Gen. Did you then ſee his Belly?

Bruce. Yes, Sir, for he threw away the Cloaths.

Att. Gen. Did you ſee upon his Breaſt, or any where elſe?

Bruce. He did not complain of any Ail there, and ſo I look't not for any thing.

Att. Gen. What did he complain of, when you came firſt to him?

Bruce. Only his Shoulders.

Att. Gen. And after his Belly?

Bruce. Yes.

L.H.

L. H. St. Hark you, Doctor, what day was that you came to look on his Belly, whether he had any Bruiſes or no?

Bruce. *Wedneſday* morning, my Lord.

L. H. St. And then you ſay upon your Oath, you ſaw there no ſwelling or diſcolouring.

Bruce. None at all, my Lord, I gave it in upon my Oath before the Coroner, and the ſame I ſay now.

At. Gen. We have done with the Doctor, my Lord.

L. H. St. My Lord of *Pembroke*, will your Lordſhip examine him to any thing?

E. of P. No, my Lord.

At. Gen. Then there is Mr. *Hemes*; pray Sir, acquaint my Lords what you know of this Gentleman Mr. *Cony*, and firſt pray you tell his Grace when you came to him firſt.

Hemes. It was on *Monday* morning after this Accident, about eight of the Clock.

At. Gen. Did he ſend for you?

Hemes. Yes, Sir.

At. Gen. How did you find him when you came?

Hemes. In great extremity of pain, and very ſore, complaining of pains over all his Body, eſpecially on his Shoulders and Buttocks. Then the Doctor, who came in ſoon after, did apply Plaiſters to him, and when he anointed him he was ſo ſore, that he could not endure any one to touch him, nor could we tell how to turn him in his Bed, or how to place him ſo as to apply the Ointment, but were fain to get a Sheep-skin to wrap him in, and by Pillows and a broad Joyn-ſtool, raiſe him up by degrees: I did then look upon his Body, but ſaw no ſwelling or bruiſe there.

L. H. St. Did you ſee his Belly?

Hemes. No, my Lord, but he did complain of an inward grief there.

At. Gen. When did he firſt complain of that?

Hemes. The firſt morning when I came.

At. Gen. What words did he then uſe? tell the very words he uſed, if you can remember them.

Hemes. No, Sir, I cannot; but he complained of a great ſoreneſs in his Belly, and an inward ſoreneſs.

At. Gen. Where, in what part of his Body?

Hemes. In his Belly, I ſay.

At. Gen. Well, now go on; how long did you continue with him? how many days did you come to him?

Hemes. I came to him every day all along.

At. Gen. Were you with him till the day he died?

Hemes. Yes; there was indeed a new Phyſician ſent for, but I ſaw him all along uſually once a day.

At. Gen. Did he complain more then once of his Belly?

Hemes. Yes, all along from the firſt morning.

L. H. St. Did you ſee him opened after he was dead?

Hemes. Yes, my Lord.

L. H. St. What can you ſay as to what you ſaw on him then?

Hemes. When he was opened, in the lower part of his Belly there was a great deal of Bloud gathered together on both the *Hypocondria's*, which is

not

not usual; I cannot tell the meaning of it, the Physician knows that best.

Att. Gen. Was it congealed black Blood?

Hemes. It was of an ugly colour.

Att. Gen. What colour?

Hemes. Of a blackish livid colour.

Att. Gen. Have you observed it often so in others? Have you used to see People opened at other times?

Hemes. No indeed not I, but very seldom.

Att. Gen. Well then, stand down you, for we have done with you.

L. H. St. My Lord of *Pembroke*, have you any thing to say to him?

E. of P. No, my Lord.

L. H. St. Then call your next Witness.

Att. Gen. That is Mr. *Jackson*. Pray you Sir tell my Lords what you know of this Business: When were you sent for to Mr. *Cony*?

Jackson. On *Wednesday*.

Att. Gen. What Acquaintance had you with him?

Jackson. I had a very particular Acquaintance with him, and I lookt upon him as a person of a strong, healthy Constitution, and not subject to any dangerous Distemper; my Acquaintance with him was of twelve years standing, and therefore I must needs know him pretty well. Upon the *Wednesday*, after this Accident, hearing he was very weak, I went to visit him, and when I came, he told me, he had been troubled with very unusual Swounding, and then fell into one of them, but with some Cordials we revived him again, when we thought all of us he had been dead. The *Friday* and *Saturday* before he died, I was with him all day, he complained of great griefs in his Belly, he said, he had great torment there, and believed he had received some ill usage lately, which occasioned these pains.

Att. Gen. From whom had he received it?

Jackson. He was very sparing in telling whom it came from.

Att. Gen. Who did he name?

Jackson. He said, he was a drinking with my Lord of *Pembroke*; but he was in such pains, that I could not ask him many Questions which he would answer.

Att. Gen. Where were his pains?

Jackson. In his lower Belly, and he had sometimes strange fainting Fits.

Att. Gen. When did he first complain of his Fits to you?

Jackson. On the *Wednesday*.

Att. Gen. When did he die?

Jackson. On *Monday* following.

Att. Gen. Did he complain on *Saturday* of his Belly?

Jackson. Yes.

L. H. St. What Discourse had you further with him?

Jackson. None but what I tell your Lordship, that I can remember.

L. H. St. My Lord of *Pembroke*, have you any thing to say to him?

E. of P. No, my Lord.

L. H. St. Who's next then, Mr. Attorney?

Att. Gen. *Alice Avery*, my Lord, who was his Nurse—Were you attending upon Mr. *Cony* in the time of his Sickness?

Avery. Yes, I was.

Att. Gen. Pray tell my Lord your whole knowledge.

Avery. When he came in on the *Monday* morning, I found he was very ill, and could not well ſtand: Sir, ſaid I to him, ſure you are very much in Beer; No, ſaid he, I am very ſore, and full of pain: Sir, ſaid I, I believe you have been in ſome bad company; Yes, ſaid he, I have been in ſome company, where I have received a great deal of wrong, I am not able to go nor ſtand, I have been beaten and kickt more than ordinary, I was never ſo abuſed in all my life; and upon his dying-Bed he wiſhed to God, he had never been in my Lord of *Pembroke*'s company, for he did think in his conſcience my Lord had been the death of him.

Att. Gen. Speak that again.

Avery. He wiſhed to God he had never been in my Lord of *Pembroke*'s company, for he did think in his conſcience that he had been the death of him.

L. H. St. How long before he died was that?

Avery. About two or three hours before he died.

Att. Gen. Did he continue ſenſible to the time that he died?

Avery. Yes, to the laſt minute.

Att. Gen. How often did he complain of his pain?

Avery. All along from the time he came out of my Lord of *Pembroke*'s company.

Att. Gen. What time did he come home?

Avery. About ſeven or eight of the Clock on *Monday* morning.

Att. Gen. Where and what part did he complain of then?

Avery. His Sides, and all parts about him.

Att. Gen. How often did you diſcourſe with him about his pain?

Avery. Every day divers times, from the time he came home till he died.

Att. Gen. And he ſpoke thoſe words a little before he died?

Avery. Yes, and often complained of his being abuſed.

L. H. St. My Lord of *Pembroke*, will you ask this Woman any Queſtions?

E. of P. No, my Lord.

L. H. St. Have you any more Witneſſes, Mr. Attorney?

Att. Gen. Now, my Lord, We ſhall call three more, that had a view of the Body after his death, upon the Coroner's Inqueſt, who will give your Grace an Account what appearings of Murther were there viſible; and they are, *Richard Wheeler*, *William Brown*, *Thomas Roberts*.

Cl. of Cr. Lay your hands on the Book: The Evidence, &c.

Att. Gen. Which is Mr. *Brown*? Did you ſee the Body of Mr. *Cony* after he was dead?

Brown. Yes, my Lord, I was one of the Coroner's Inqueſt, which after view of the Body went into another Houſe; but ſome of us ſeeing the Body ſwelled at that rate as it was, and being unſatisfied of the cauſe, went back again to look upon it, and there I ſaw upon his right Breaſt a great black Bruiſe; and I looked upon the Cawl, which was all waſted away; and on his left Side, again a great black Spot, and in the bottom of his Belly a quantity of very ill-lookt Bloud.

Att. Gen. When was this you ſaw it? what day? how long after his death?

Brown. The day after he died.

Att. Gen. Where did you obſerve any Hurt and Bruiſe upon him beſides?

Brown. As he lay before he was opened, we ſaw him all over ſwelled at a prodigious rate, and black and blue in divers places; ſo that I was unſatisfied till I had ſeen the inward parts, and therefore went up and ſaw what I ſaid before.

L.H.

L. H. St. Did you know the Gentleman before?

Brown. No, my Lord.

L. H. St. My Lord of *Pembroke*, do you desire to ask him any thing?

E. of P. No, my Lord.

L. H. St. Then go on, Sir.

Att. Gen. *Richard Wheeler*, pray tell my Lord what you know.

Wheeler. My Lord, I was summoned upon the Jury by the Coroner, and according to my duty I made such an inspection as I could into the Body; I did observe upon his right Breast a very black and great Bruise, and on the left side of his Belly a very black and great Bruise, which was indeed of an other-guise colour than that of settled Bloud, for I have of my own knowledge had a sad experience of that kind.

Att. Gen. Did you know the Gentleman before?

Wheeler. Yes, I knew the Gentleman very well, and I had not known him to be the same person then, but by their description that were about him, for all the parts of his Body were most violently swelled.

Att. Gen. Did you see the settled Bloud at the bottom of his Belly?

Wheeler. Yes; and as I was informed, that was occasioned by his being forced to lie on his Back continually, because his pain would not suffer him to move: that on the Side, and Ribs, was a perfect Bruise.

Att. Gen. Where is Mr. *Roberts*? did you see this Gentleman's Body after his death?

Roberts. I saw the Body after it was opened, and viewed the inward lower parts of the Belly, where there was a quantity of Bloud gathered together.

Att. Gen. Was it more black in that part then in others?

Roberts. It was black congealed Bloud.

Att. Gen. How broad were the spots?

Roberts. About the breadth of my hand.

L. H. St. Mr. *Roberts*, did you see the left side of the Belly bruised?

Roberts. Yes, my Lord; and (as I said) in the lower inward parts black congealed Bloud.

L. H. St. Was there any swelling?

Roberts. Yes, my Lord, very much.

L. H. St. The Doctor that was examined before, said there was no swelling nor discolouring.

Att. Gen. He did so, my Lord; but this was several days after that.

L. H. St. My Lord of *Pembroke*, will you examine these men?

E. of P. No, my Lord.

Att. Gen. My Lord, we have but one Witness more for the King, and that is Mr. *Charles Cony*, who is Brother of the Gentleman that died, who will give you an account what he said in his sickness; and the Sayings of a dying man in such circumstances, are remarkable.

Cl. of Cr. *Charles Cony*, harken to your Oath: The Evidence, *&c.*

Att. Gen. Now Mr. *Cony*, tell his Grace and my Lords the occasion of your Brother's sickness and death.

Cony. May it please your Grace, on *Monday* the 4th. of *February* I was sent for by my Brother, about nine of the Clock in the morning, to come to speak with him, but not believing his business to be urgent, deferred my going; the Messenger immediately comes back again, and tells me my Brother was exceeding ill: As soon as I came, I found him almost dying, his Eyes set, and he ex-

extremely ill, but we recovered him in a little time: whilſt he complained of great pain, I examined what might be the cauſe, and where he had been laſt night, (for I underſtood he came not home till morning) and in what company. And when I was told of my Lord of *Pembroke*'s company, who had ſtruck him down with a box of the Ear, both he and I quickly concluded how his ill came: But to be ſatisfied, (he telling me he could not remember what he did) we ſent for the Drawer, to know the truth of the matter: but in the mean time, to comfort him, I told him I hoped it was only a fainting Fit, which would be over again in a while. The Drawer came, and did aſſure me that my Lord did never ſtrike him; which upon aſſurance I did believe, eſpecially when he came again in the Afternoon, and told me the ſame ſtory. All the while he was in the horrideſt pain that could be, and could not be touched, but was forced to lie upon his Back. The Doctor told us, for application to eaſe his pain, the beſt thing to wrap him in was a whole Weathers Skin; which we did at two of the Clock in the Afternoon, by the help of a Chirurgeon, raiſe him up, and put on him. On *Tueſday* morning I ſent to know how he did, being neceſſitated to go another way; he ſent word back, he was pretty well at eaſe, and had reſted pretty well. On *Wedneſday* he roſe, and ſat up; on *Thurſday* he was ſo well, that he would have ſome Friends to Dine with him in his Chamber; on *Friday* he was a little ill again, but on *Saturday* he was ſo well, that he would have gone abroad, and truly we did never (I'm ſure I did not) believe he would have died, till about two hours before he died. One day when Dr. *Conqueſt* came out of his Chamber, he ſeem'd to be in a Huff, and ſaid he was only kept there to do the Drudgery; and when I asked him, what he thought of my Brother? he anſwered me ſhort, *I cannot tell whether it be a* Pembroke-*kick or no.* And when I, upon the report of my Lord's having abuſed him, (which yet upon the Drawer's anſwer I believed not) ſpoke to him about it, he would ſeem diſpleaſed any ſhould mention it: He once indeed told me, he had ſomething elſe to reveal to the Doctor, but what it was I cannot tell.

Att. Gen. Did you apprehend him to be ſo ill as he was?

Cony. No, I never believed it, till an hour before he died: and this is all that I can ſay, my Lord.

L. H. St. Will you, my Lord of *Pembroke*, ask Mr. *Cony* any queſtion?

E. of P. I deſire your Grace to ask him what Chirurgeons they were that did view the Body after dead.

L. H. St. Mr. *Cony*, come forward, my Lord of *Pembroke* deſires to know what Chirurgeons viewed the Body?

Cony. Mr. *Snell* the Chirurgeon, I think, my Lord.

E. of P. I deſire your Grace he may be examined.

L. H. St. If the Kings Councel have done, then your Lordſhip may examine whom you pleaſe: what would your Lordſhip examine into?

E. of P. To give your Grace an account what might be the cauſe of the Bloud found in Mr. *Cony*'s Body.

Att. Gen. Becauſe we did omit to examine *Jackſon* to that matter, we deſire for the King we may call him to that point now.

L. H St. You ſhould have examined all your Witneſſes fully at firſt.

Att. Gen. We acknowledge it, my Lord; but ſince we did forget it, we humbly crave leave to do it now.

L. H. St. Here is Mr. *Jackſon*, what do you ask him?

Att.

Att. Gen. Mr. *Jackson*, Were you preſent at the opening of Mr. *Cony*'s Body?

Jackson. Yes, Sir.

Att. Gen. What did you ſee there?

Jackson. There was an extraordinary quantity of extravaſated Bloud in the lower part of his Belly.

L. H. St. Extravaſated Bloud?

Jackson. Yes, my Lord.

Att. Gen. How might that come? might it not proceed from a natural cauſe?

Jackson. I believe it came from ſome Bruiſes given him, and from ſome Violences that were done to him.

Att. Gen. In the Belly was it?

Jackson. Yes, in the Belly.

Att. Gen. You ſaw then: Did you ſee any Swelling there?

Jackson. Yes, and the *Diaphragma* bruiſed, *&c.*

Att. Gen. Now, my Lord, We have done with our Evidence for the King.

L. H. St. My Lord of *Pembroke*, if your Lordſhip have any Witneſs to call, or will ſay any thing for your ſelf, now is the time.

E. of P. I deſire your Grace that Dr. *Lower*, and Dr. *Conqueſt*, and one Mr. *Raven*, may be examined for me.

L. H. St. Call Dr. *Lower*, Dr. *Conqueſt*, and Mr. *Raven*.

Cl. of Cr. Here they are, make room for them.

L. H. St. My Lord of *Pembroke*, who will your Lordſhip begin with?

E. of P. Dr. *Conqueſt*, my Lord.

L. H. St. Doctor, You are not upon your Oath, but you muſt have a ſtrict care what you ſay, for there will be a good account to be taken of it at another place, and it being a Teſtimony before a Court of Judicature, the obligation upon you to ſpeak the truth is as great, as if you did ſwear.

Dr. *Conqueſt.* The Account I now give, my Lord, is that Account which I gave upon my Oath before the Coroner.

L. H. St. You muſt give it again *vivâ voce*; we muſt not read your Examination before the Court.

Conqueſt. The firſt occaſion I had to ſee Mr. *Cony* as a Phyſician, was about three months before this unhappy Accident; he was then in a fainting Fit at the *Roſe*-Tavern, *&c.* where I was ſent for to him: He had for half an hour lain quite dead, as they thought, but with their rubbing him, and giving him ſome mull'd Sack, he was come to himſelf juſt as I came, but he had no Pulſe, and was relapſing into his Fit: I gave him ſome Drops and Cordials, and ſent him home pretty well again. We went from thence, and the next morning his Man came to call me, and told me his Maſter was dying, which was (as I take it) the 6th. of *December* laſt: When I came thither, I found his Man ſitting by the fire; and asking for his Maſter, he told me he was aſleep; I was ſomething vext at the Fellow for troubling of me ſo, and while I was ſpeaking to him, Mr. *Cony* at laſt heard my voice, and calling me to him, deſired me I would come again in the afternoon, for he had a mind to reſt this morning: I came at One of the Clock again, where I found him very ill, and very melancholy; he wept, and ſent his Man down ſtairs, and when the Man was gone, I asked him what was the occaſion? He told me, he found ſo great an oppreſſion at his Heart, that he could hardly ſpeak: I deſired he

would take ſome advice, and ſend for another Phyſician; but he would have none elſe, but would needs go abroad that afternoon: I deſired him all I could; but not prevailing with him, I gave him ſome Cordial Drops, and deſired him to return home betimes; but he did not, but, as I heard, drank very hard, and returned not till very late. In ſhort, in the ſpace of two months, I have been called out of my Bed above twenty times, to give him advice, and to recover him out of his Fits; but he would take no advice, do whatever I could. After this was his meeting with my Lord of *Pembroke*, which he thus gave me Relation of: He told me, he had been with Mr. *Goring* in the City that day drinking hard, and when he came to *Longs*, he was ſo extreamly drunk, that he cannot remember any thing that was done there, but finding himſelf much in pain the next day; he was ſo ignorant of the Tranſactions there, that he only thought he had had ſeveral Falls off the Chairs near the fire; he ſaid indeed, he afterwards ſent to enquire what had paſſed in his company that night, and he heard my Lord of *Pembroke* ſhould give him a Box on the Ear, but he remembred it not. Two or three days after he ſent for me, and told me, now he would take advice of me, and enter into a courſe of Phyſick; but knowing his condition to be ſo bad, I would not venture upon it alone, and deſired that he would joyn ſome one elſe with me in conſultation: He asked me, what Phyſician he ſhould ſend for? I deſired him to name any one whom he had a mind to; he ſaid, he knew none, and therefore would have me take whom I would, and then named Dr. *Lower*, and obtained his conſent to have his advice, whom I brought with me to his Lodgings. And the *Saturday* before he died, as we were coming in the Coach, I told Dr. *Lower* what I had known of his Diſtemper before, and what might be the occaſion of it, which (when we came thither) I repeated again in Mr. *Cony*'s preſence; who did confeſs the whole to be as I ſaid, that he had been a very hard Drinker of Wine, and ſtrong Waters upon it, which had (he believed) cauſed a Stagnation of Bloud in his Body, which might be the occaſion of his fainting Fits. We conſulted the whole cauſe; he owned no Blow or Kick that he had received, neither did I believe his Intrals had received any ſuch prejudice, becauſe I ſaw him my ſelf take two or three Gliſters, as particularly that evening: Yet he would not be regular, but that night drank three whole Tankards of cold ſmall Beer, which did put him into a very violent Fit of the Gripes. He ſent for me, and having left him pretty well, I wondred what alteration could cauſe ſo violent a Diſtemper in him ſo ſuddenly: He fell a vomiting, and vomited all night; and when I came and found him in a dying Fit, I gave him ſome Drops I had about me, and fetcht him to life again; but ſtill he was very bad, and he had a Gliſter for the Gripes; he would fain have had ſome more ſmall Beer, which I diſſwaded him from, and adviſed him rather to white-Wine Poſſet-drink, but he ſwore a great Oath he would have ſmall Beer; Dr. *Lower*, I ſuppoſe, ſaw him that morning. An hour before he died I came again, and thought fit to bloud, and ſo he was; he bled about eight ounces, and was a little better, ſo I left him: An hour after I came again, and found he was dead; but for his complaining of any Bruiſe or Hurt that way received, I remember not.

L. H. St. Did you ſee him after he was dead, and when he was opened?

Conqueſt. Yes, my Lord, I did ſee him opened.

L. H. St. What was your Judgement then?

Conqueſt.

Conqueſt. My Lord, There was clotted Bloud among the Bowels, that was extravaſated. My Lord, The breaking out of which, I did attribute to the great quantity of ſmall Beer he had drank, and the Gripings that followed upon it; but the Bowels were none of them touched, and he himſelf attributed his Fits to that.

L. H. St. Mr. Attorney, Will you ask him any croſs Queſtions?

Att. Gen. No, my Lord.

L. H. St. Then Dr. *Lower* pray ſpeak your knowledge.

Lower. All the Account, my Lord, that I can give is, That the day before Mr. *Cony* died, Dr. *Conqueſt* did come to me to deſire me to go with him, and by the way (as he related) told me the manner of his Fits, and what he thought was the occaſion of them; and in that Diſcourſe we continued till we came to his Lodgings, where we found him in his Bed; and when he was up, Dr. *Conqueſt* repeated what he had told me before, and he acknowledged all that to be true: I my ſelf asked him many Queſtions how he found himſelf; he ſaid, thoſe Fits came upon him ſuddenly by ſickneſs upon his Stomach; but there was not any Diſcourſe in my hearing of any Bruiſe or Hurt that way, nor had I any reaſon to ſuſpect any ſuch thing ſhould be the cauſe of his Illneſs, for he had no ſymptome of a Fever upon him, either in Tongue, Pulſe, or Urine, which would have been, had he owned his Diſtemper to any thing of that kind. The next day I was ſent for to him early, but my neceſſary attendance on other Patients would not let me come quickly to him: When I came I found him dying, and ſeeing no hopes of his recovery, left him; I was deſired to be preſent at the Diſſection, but becauſe of the rumour of this Buſineſs, I ſaid it would be a troubleſom matter, and therefore would purpoſely avoid it.

L. H. St. So you did not ſee him diſſected?

Lower. No, my Lord, I did fear being troubled, and would have avoided it, but could not, it ſeems, for I am come here to teſtifie this.

L. H. St. Did he uſe any words to you whilſt he was ſick, complaining of any abuſe or wrong offered him by beating or kicking?

Lower. No, my Lord.

L. H. St. How long was it before he died that you ſaw him?

Lower. It was on *Saturday* at four of the Clock in the afternoon, and he died on *Sunday* at noon.

L. H. St. And when you came to ſee him again, you found him dying?

Lower. Yes, my Lord.

L. H. St. But you ſay, all the time you were with him, you ſaw no ſymptome of a Fever on him?

Lower. No, none at all, my Lord.

L. H. St. I then ask you this Queſtion, Doctor, Can any man be mortally hurt and bruiſed, whereof he may languiſh, and not have a Fever?

Lower. According to my knowledge and experience, my Lord, uſually and moſt commonly upon a mortal Bruiſe, an Inflamation follows, and that Inflamation cauſes a Fever, which will be evident in the Patient's Pulſe, or Tongue, or Water; but none of theſe I found ſo effected with Mr. *Cony*.

L. H. St. Have you any thing to ſay to this Gentleman, Mr. Attorney?

Att. Gen. No, my Lord.

L. H. St. Where then are the reſt of your Witneſſes? My Lord of *Pembroke*, Will you call any more Evidence?

E. of P.

E. of P. Yes, my Lord, Mr. *Raven.*

L. H. St. Dr. *Conqueſt*, pray before you go; you ſay you told Dr. *Lower* of Mr. *Cony*'s Fits before, were they the ſame with thoſe he had in his laſt ſickneſs?

Conqueſt. Yes, my Lord, the ſame Fainting Fits.

L. H. St. And you imputed them to the ſame cauſe.

Conqueſt. Yes, my Lord, to his hard drinking Wine and Strong-waters, and then great quantities of Small Beer; I told his Landlady often it would kill him, but I could never get him to be regular, nor take any advice.

L. H. St. Hath your Lordſhip any more Witneſſes?

E. of P. Mr. *Raven*, my Lord.

L. H. St. Come forward, Mr. *Raven*, and ſpeak out.

Raven. I viewed the Body (my Lord) before and when it was opened; and it was reported to me that there was a Bruiſe in each ſide of the Belly, of which thereupon I took a ſtricter view, and could find no blackneſs nor blewneſs, nor marks of Bruiſes; upon which the Body was opened, and there iſſued thence clotted Bloud; then I looked upon the Cawl, which was withered and conſumed, and the Heart was as looſe as a Rag, and his Lungs ſtuck to each ſide of his Ribs; and as to the matter of the Bloud, that was not an extraordinary thing, for it is known to Phyſicians, that in all Natural Deaths there muſt be extravaſated Bloud in the lower Belly.

L. H. St. How did you think there came to be that quantity of Bloud there?

Raven. This Bloud I think (my Lord) muſt be extravaſated by the violence of his Gripes, for it is proved he drank a great quantity of Claret, and afterwards of Small Beer, which ſet the Bloud upon a Fermentation, that ſet him a Vomiting, by the violence thereby uſed to Nature this Bloud was thrown down into the Belly: but in all Natural Deaths, if there be not ſo great a conſumption of the Bloud that there is none left, there muſt be ſome extravaſated; it is a clear caſe.

L. H. St. My Lord of *Pembroke*, hath your Lordſhip any more Witneſſes?

E. of P. Yes, my Lord, two more, *Benjamin Long* and *William Viner.*

L. H. St. Who does your Lordſhip begin with?

E. of P. *Long.*

L. H. St. Do you hear, *Long*, you muſt have as great a care what you ſay, as if you were upon your Oath.

Long. A little before this buſineſs happen'd, Mr. *Cony* comes into my Houſe at *Covent-Garden*, and ſaid he was very ill; he was juſt going to ſit down, and miſs'd the Chair, and had like to have faln down, being almoſt in a Swound; whereupon he ſaid, ſend for Dr. *Conqueſt* preſently, or elſe I ſhall die: ſo I ſent my Servant to call him, who found him at the Coffee-houſe: When he came in, ſaid he, Sir, how do you? I am glad you are come, ſaid Mr. *Cony*, for I am very ill; and there were two Gentlemen came in with the Doctor, that were then going to the Play-houſe: ſaid Mr. *Cony*, I am taken with the Fainting Fits, and fear they will kill me; upon that Dr. *Conqueſt* bid him have a care of drinking, for it would ruine him.

L. H. St. When was this?

Long. A little before *Chriſtmaſs*, my Lord.

L. H. St. How long before he died?

Long.

Long. It was before he was hurt.

L. H. St. How long?

Long. Five or six Weeks, my Lord, as I remember, I cannot tell exactly.

L. H. St. Well, and what followed?

Long. Dr. *Conquest* would have him go home to Bed, which I know not whether he did or no, but he went away from our House, and the Doctor said he would send him a Glister, and some other things the next morning: And this is all I can say.

L. H. St. Is that all you can say?

Long. Yes, my Lord.

L. H. St. Why was not this accident done at your House?

Long. No, my Lord, it was at my Brothers in the *Hay-Market*.

L. H. St. Then call next *Viner*; what say you?

Viner. May it please your Grace, I am Drawer at Mr. *Longs* in the *Hay-Market*, I did see my Lord strike him with his hand, and that is all; I came in just as he struck the blow, and Captain *Savage* bid me keep out Mr. *Goring*, which while I was doing, I knew not what was done more; but after they had laid him upon the Chairs, they charged me to make a Fire, and look after him, and left him: He fell down divers times off the Chairs; and when he came to himself a little, I asked him how he did? he told me he was very sick, and I got him still up again upon the Chairs: And then he had several Fainting Fits in the Room, and about seven of the Clock in the morning, we sent him home in a Chair to his Lodging. The same day at one of the Clock he sent for me, to know what had happen'd, for his own memory would not serve him to tell: I did not think fit then to tell him my Lord had struck him, but told him he had had many falls in the Room: 'Tis Fits, said he, that I have had not long since, and it comes with my hard drinking, and not looking to my self.

L. H. St. He supposed it to be so.

Viner. Yes, my Lord, he himself did.

L. H. St. Did you see my Lord of *Pembroke* tread upon him?

Viner. No, my Lord, I only saw the blow of his hand, for I was getting Mr. *Goring* out of the Room.

L. H. St. Did he say my Lord of *Pembroke* did tread upon him?

Viner. No, he could not tell any thing that my Lord had done to him; he was drunk that night, and therefore sent for me to know how it was.

L. H. St. My Lord of *Pembroke*, hath your Lordship any more Witnesses?

E. of P. No, my Lord.

L. H. St. Did not your Lordship speak of one *Snell*, my Lord, a Chirurgeon, at first.

E. of P. I did expect, my Lord, they should have brought the person your Grace speaks of.

L. H. St. Why, my Lord.

E. of P. Because he was their Chirurgeon.

L. H. St. What say you now of the King's Councel, to my Lord's defence?

Sol. Gen. If my Lord hath done, we are ready to go on for the King.

L. H. St. Will your Lordship say any thing more for your self?

E. of P. I have nothing more to say, my Lord.

Then Sir Francis Winnington, *his Majesties Solicitor General, summ'd up the Evidence, and concluded the Charge thus:*

Sol. Gen. May it please your Grace my Lord, High-Steward of *England*, and my Noble Lords, that are now Judges of this Cause of Blood; I shall, with all faithfulness endeavour to discharge my duty in this Great Court, and confine my self solely to the Evidence that hath been given, and I hope I shall not do this Noble Lord, the Prisoner at the Bar, any injury, by misrepetition. This Evidence, my Lords, that hath been produced for the King, to make it out, that the Prisoner at the Bar is guilty of Murder, doth (may it please your Grace) consist of three parts.

1. In the first are contained those Matters of Fact, which did arise at the time when the poor unfortunate Gentleman came into my Lord of *Pembroke*'s company, and what happen'd before my Lord of *Pembroke* did depart from that place.

2. The second part of the Evidence consists of Matters that did arise by confession of the Party, and his discoursing with persons who came to visit him, or were with him during the time of his sickness.

3. The third part doth consist of Matters arising after his death, upon the view of the Body. Under these three heads are comprehended all the King's Evidence, and with humble submission I humbly conceive, that the Evidence doth reach the Indictment, which is for the Crime of wilful Murder. But when I have humbly stated the Fact, I must submit it to the Judgement of my Noble Lords and Peers.

But to take a due method, I shall begin with a word or two of what Mr. Attorney General was pleased to hint, when he opened the Cause, that is, to shew what Murder is, and wherein we conceive the Evidence comes up to the Indictment. Murder in our Law is, when one man kills another upon malice fore-thought; now that malice is comprehended under two particulars: The one is express a former grudge, discontent, and hatred to a man, to lye in wait to slay him: The other is malice imply'd, and that is when a person will come and fall upon another, and kill him with violence, without any provocation; and that I take to be the Case now before your Grace, and these Noble Lords; whether this Noble Lord, the Prisoner at the Bar, be guilty of Murder, under the head of malice imply'd, having killed a man, without any provocation given; for if it should be made appear, as I humbly conceive it hath, with submission, that Mr. *Cony* did receive his Wound, whereby his death came from the Earl of *Pembroke*, it is with our Law Murder.

That my Lord of *Pembroke* did invite him into his company, is sworn by four Witnesses; for when they came into the House, they did not so much as enquire whether my Lord was there or no; and when my Lord asked him to come into the Room, Mr. *Cony* did excuse it, in a manner, by having his Friend with him; pray bring your Friend in with you, said my Lord: After a little while it was said, there were several Discourses pass'd between my Lord and Mr. *Goring* concerning Play, and their Families; but the third Witness doth swear, that when they were speaking of playing for 500 *l.* Mr. *Goring* declined; my Lord of *Pembroke* first called him idle Fellow, and that occasioned Mr. *Goring* to give that language, which was not so fit for him to give

give to a Noble Lord of his Quality. But may it please your Grace, let the Discourse between Mr. *Goring* and my Lord of *Pembroke* be what it will, the Question will be, Whether or no the Party that was killed, gave my Lord of *Pembroke* any provocation, or cause of discontent, which might make him give him that Blow? or whether or no the striking or kicking was the cause of his death? That comes in the last place, for I am now under that head; there was no provocation given by Mr. *Cony* to my Lord to strike him, and four Witnesses there were to that, the persons by at the time when it was given, who all as to the substance swear the same thing, only one or two Circumstances come from some of them, that do not come from all. Mr. *Savage*, a man of Quality, and an honourable Family, swears, That at the time when Mr. *Goring* was put out of the Room, he saw the Earl of *Pembroke* (turning his face) give *Cony* a Blow on the Head, and one Kick when he was down; the Question was asked him, Whether he kickt him upon the Belly; but that he could not answer to: He likewise doth particularly say, After the Blow was given by the Earl of *Pembroke*, that struck him down to the ground, he saw his Knee lifted up to kick him, higher than the motion of usual walking, so that some violence was used as to that. Mr. *Fitz-Patrick*, though they all agree in substance, yet he hath one particular differing from the rest; he saith, That when my Lord of *Pembroke* was asked why he struck Mr. *Cony*, he answered, Because he said Mr. *Goring* should not go out of the Room, without his knowing some reason for it; this he swears the Earl did say, but whether it was so or no is the Question. *Shelley* says, No such word pass'd, nor doth *Savage* speak of it: But be that Circumstance true or not, (for all the Witnesses agree in Substance, and may not be able to agree in all Circumstances) yet under submission, I must leave it to the Judgement of my Lords the Peers, whether that be Provocation sufficient to lay violent hands on a Man. *Shelley* indeed says the words were, I know not why my Friend is turn'd out of doors; now whether these are a Provocation, such as in Judgement of Law can be deemed sufficient to lay violent hands on a Man to kill him, is the Question; we suppose it is not, but such a stroke is given without a Provocation, in which the Law implies malice. This (may it please your Grace) is the sum of that which I humbly take the boldness to remember your Lordship of, as to the first part of the Evidence.

2dly. The second part is upon what ariseth after the Blow was given. My Lord of *Pembroke* that time was certainly apprehensive he had done the Gentleman some wrong, and that is evident by his care of him after, for his own Witness *Viner* doth say, that my Lord bid him make a fire and watch with him; surely if my Lord had not been conscious to himself, that he had done some thing extraordinary to the person of that Gentleman, that caution had not been given to the man: But besides (my Lord) there are little Circumstances, which are always allowed for Evidence in such Cases, where men receive any Wounds, to ask them Questions while they are ill about it, who hurt them. Now as to this there are four Witnesses also, Dr. *Bruce*, Mr. *Hemes*, Mr. *Jackson*, and *Alice Avery*.

Dr. *Bruce* swears, That when he came on the *Monday* to enquire of Mr. *Cony* what his Ilness was, he did complain of soreness about his Shoulders, but did not make mention of the lower part of his Belly, or any discolouring there.

But *Hemes* the Apothecary says, He not only complained of extream pains

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in his Shoulders, but also of extream inward soreness in the lower part of his Belly, and this person was frequently with him, and the same complaints came from him, till he expired his last breath.

Jackson, he did know him for a long time before; he saith indeed, He had about two or three months before a fainting Fit or two, but to this time he lookt upon him as a healthy man, and he continued with him off and on till he died, and to him he did declare he had received injury from the Earl of *Pembroke*, though he was very loth to say what: And he also tells your Lordships, that he saw the Bloud in his Belly after the Dissection, which he imputed to some Hurt he had received. Indeed there is a Chirurgeon that tells your Lordships, that it is an ordinary thing, and that it is so in all natural Deaths, and it might be occasioned by his drinking the Beer, which made him vomit, and concluded with these words, (I noted them.) 'Tis a clear Case; but the man not being upon his Oath, and giving it in as his single opinion, I hope will not bear so much weight with your Lordships.

The Nurse that was continually with him to the last moment, swears, He did continually complain after he came into the House, of pains all over his Body, and (as she saith) continued in his senses, and the right use of his understanding, till the last breath, but principally complained of soreness in his Shoulder, his Side, and his Belly, and did likewise often mention my Lord of *Pembroke*'s unkindness to him, declaring about two hours before he died, that he thought in his conscience the Earl of *Pembroke* was the cause of his death.

These four Witnesses swear what I have truely repeated, for I would be very unwilling in a Cause of Bloud, to misrepeat the Evidence, either to the prejudice of a just Cause for the dead, or to press for unjust vengeance upon the living, it being my duty only to recollect what is sworn, and leave it all to your Lordships Judgement.

3dly. We have that which is Evidence in Law, upon the view of the Body after his death. It was viewed legally by a Jury of indifferent persons, summoned by the Coroner; three of them being produced do swear, that there were a great many visible Bruises upon the Body, and Swellings all about: And for the discolouring of the parts bruised, *Roberts* swears, the patch was about the breadth of his hand: *Brown* likewise swears, that he was black and blue up and down the Body in broad patches: These are Jury-men, disinterested persons. It is true, Mr. *Cony*'s Brother, the last Witness for the King saith, He knew nothing of the Business, for his Brother would never acknowledge any thing to him; but something that he speaks is very material, That Dr. *Conquest*, my Lord's Witness, coming out of the Chamber one day, seemed angry, and to have taken some distaste, as if he were neglected, and used an expression, which your Lordship may remember, upon Mr. *Cony*'s asking him what ailed his Brother, he could not tell he said, it might be *A Pembroke-Kick*. And this is the sum of the Evidence for the King.

For the Evidence on the other side, I think the substance of it is only, That this Gentleman was used to have fainting Fits, and those occasioned, as they think, by his hard Drinking, and that might bring his death upon him; but they offer no Counterproof to the Fact.

But the Question is now, Whether or no this man came to his death by other means; for it is no Argument to say, because a man is sick, it is lawful to kill him; but we are to enquire, whether he came to his death by those

Blows

Blows given him by the Prisoner at the Bar? If then it be admitted that the Blow was the cause of his death, and the Kicks withall, I humbly then submit to your Lordships consideration, whether the Kings Evidence hath not reacht up to the Indictment: Here is Murther with Malice implied by the Law, for there is no colour of pleading a Provocation of the Blow, to be the cause of his death. Now whether or no it be so, I humbly offer these Reasons for the Affirmation; this man was not look'd upon to be a man in that condition as to be a dying man, before the Blow.

Obj. But he was a great drinker, that brought him to those Fits, and that hastned his end.

Answ. Though he was so, yet from the instant that he did receive the blow, he never had any ease till he died, in so much that Mr. *Savage* tells your Lordships, he took him up immediately after my Lord kicked him, and he was some minutes before he could get him to life again, and then he could not keep himself from Fainting again: So that upon the circumstances of what the Witnesses for the Prisoner have said, and the Evidence offered in behalf of the King, if this were the cause of his death, we leave it to your Lordships consideration, whether it be not Murther in this Noble Lord the Prisoner at the Bar: To that determination we submit the Cause, and whatever opinion your Lordships shall be of in the Cause, I have no more to say, but that the King's Justice in this Prosecution, was suitable to the Law given by the Almighty in the Infancy of the World, *That whosoever shedderh man's Blood, by man shall his Blood be shed.*

L. H. St. Will your Lordships please to withdraw to consider of the Evidence?

Then the Lords went back in the same order they came in, and went into the House of Lords; and from thence, after two hours debate, they returned into the Court, and Proclamation was made as followeth.

Cl. of Cr. Serjeant at Arms, make Proclamation.

Serj. O yes, my Lord High Steward of *England* his Grace straitly chargeth and commandeth all manner of Persons here present, to keep silence upon pain of Imprisonment.

Then his Grace spake to the Peers.

L. H. St. Your Lordships have heard the Evidence against the Prisoner, and for him, on both sides, and the Solemnity in this case is, that your Opinions are to be delivered severally, in the absence of the Prisoner, who is to hear all that is by the Witness or Councel said against him, but is to have his Judgment from the High Steward.

Upon the whole matter the Question is this; Whether my Lord of *Pembroke* be guilty of the Felony whereof he stands Indicted, for the Murther of Mr. *Cony*, or not guilty?

The order of your Opinions being delivered, is to begin with the Puisne Baron, and so upwards.

I desire time to take your Lordships Judgments distinctly, and I desire each of your Lordships to speak out, that I may hear it.

L. H. St. My Lord *Butler*, what is your Opinion? Is *Philip* Earl of *Pembroke* and *Montgomery* guilty of the Felony and Murther whereof he stands Indicted, or not guilty?

L. Baker. Not guilty of Murther, but guilty of Man-slaughter.

The same Question to the rest.

The Lord High Steward counts their numbers.

L. H. St. Six of my Lords find him guilty: eighteen find him not guilty: fourty find him guilty of Man-slaughter. Call for the Prisoner to the Bar.

Cl. of Cr. Serjeant at Arms, make Proclamation.

Serj. O yes, Constable of the Tower of *London*, bring forth the Body of thy Prisoner *Philip* Earl of *Pembroke* and *Montgomery*, on pain and peril shall fall thereon.

Then the Prisoner came in, with the edge of the Axe still from him, and his Grace spake to him as followeth.

L. H. St. My Lord of *Pembroke*, You have been Indicted for the Murther of *Nathaniel Cony*, and upon your Arraignment you have pleaded *Not guilty*, and have put your self upon the Judgment of your Peers; and your Peers have considered what hath been said for you, and against you, and the Judgment of my Lords is this, That you are guilty of Man-slaughter for killing of *Nathaniel Cony*. What can you say for your self, why Judgment should not pass upon you to die according to the Law?

E. of P. I claim the Priviledge of the Statute made in that case, my Lord.

L. H. St. You must have it, my Lord, it cannot be denied you; for by the Act of Parliament, where *Clergy* is allowed to a Common person, by Reading, and Burning in the Hand, *a Peer convicted* of such Felony, is to be delivered without either, therefore we cannot deny it you: But your Lordship must give me leave to tell you, that no man can have the benefit of that Statute but once, and so I would have your Lordship take notice of it, as a caution to you for the future.

Your Lordship is now to be discharged, paying your Fees.

Then the Prisoner went from the Bar, and his Grace by Proclamation thus dissolved his Commission.

Cl. of Cr. Serjeant at Arms, make Proclamation.

Serj. O yes, O yes, O yes, my Lord High Steward of *England* willeth and commandeth all Persons here assembled, to depart in Gods peace and the Kings from this place, for his Grace doth now dissolve his Commission.

God save the King.

Then his Grace concluded the Ceremony, by breaking his Staff.

FINIS.

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